

EXHIBIT 610

Daniel McCornack, Jr.

May 17, 2011

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UNITED STATES DISTRICT COURT OF THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLES DIVISION

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IN RE: DIGITEK PRODUCT LIABILITY)
LITIGATION)

THIS DOCUMENT RELATES ONLY TO:)
Kathy McCornack, an individual;)
Daniel E. McCornack, Jr., an)
individual; and Ralph J.)
McCornack, a minor by and through)
his guardian ad litem,)

Plaintiffs,)

vs.)

ACTAVIS TOTOWA, LLC, et al.,)

Defendants.)
-----)

Case No. 2:09-cv-06

DEPOSITION OF DANIEL MCCORNACK, JR.

San Luis Obispo, California

Tuesday, May 17, 2011

10:24 a.m. - 12:26 p.m.

REPORTED BY CINDY D. GRIFFITH
CSR #7281

Daniel McCornack, Jr.

May 17, 2011

1 UNITED STATES DISTRICT COURT OF THE
 2 SOUTHERN DISTRICT OF WEST VIRGINIA
 3 CHARLES DIVISION

4 * * *

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10 Plaintiffs,)

11 vs.)

Case No. 2:09-cv-06

12 ACTAVIS TOTOWA, LLC, et al.,)

13 Defendants.)
 -----)

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 15
 16 Deposition of Daniel McCornack, Jr., produced,
 17 sworn and examined on the 17th day of May,
 18 2011 between the hours of 10:24 a.m. and
 19 12:26 p.m. at the offices of McDaniel
 20 Shorthand Reporters, in the County of
 21 San Luis Obispo, State of California,
 22 before Cindy D. Griffith, California
 23 Certified Shorthand Reporter, within the
 24 State of California.
 25

Daniel McCornack, Jr.

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I N D E X

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1 DANIEL McCORNACK, JR.,
2 having been first duly sworn, was
3 examined and testified as follows:
4

5 EXAMINATION
6

7 BY MS. LOVE:

8 Q Would you please state your full name?

9 A Daniel Elwin McCornack, Junior.

10 Q For the record, appearances, I'm Avril Love
11 from Tucker Ellis West. I'm representing the Actavis
12 defendants in this matter.

13 MS. LIM: My name is Tiffany Lim, from Shook
14 Hardy & Bacon. And I'm representing the Mylan
15 defendants in this case.

16 MR. ERNST: Do both of you have cards?

17 MS. LOVE: Yes.

18 MR. ERNST: Thank you.

19 BY MS. LOVE:

20 Q How old are you?

21 A Twenty.

22 Q Twenty.

23 Have you ever been deposed before?

24 A No.

25 Q Has your attorney explained the process to you

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1 so that you understand what's going to go on here today?

2 A Yes.

3 Q Okay. Just so that everything goes smoothly
4 today, I'm going to take a little time to explain to you
5 also, so that we make sure we have a good record. It's
6 really easy in these depositions to speak quickly, to
7 anticipate questions or answers. And so I want to make
8 sure that both you and I avoid that.

9 As you can see, our court reporter is here
10 taking down everything that we say, and it's very
11 important that neither of us speaks over each other.
12 From time to time, your attorney may make an objection.
13 And that's a normal part of the process. And if he does
14 do that, just let him go ahead and state his objection
15 for the record, and then when he's all done, you can
16 answer the question unless he tells you not to.

17 A Okay.

18 Q So another thing that I want to explain is that
19 if I ask you a question and you can't remember or you
20 don't know the answer, that's fine. I would like you to
21 do your best to answer the question to the best of your
22 recollection, but you don't have to guess. No guessing.

23 A Okay.

24 Q And at the end we're going to have a record,
25 and you'll have an opportunity to review it and to

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1 correct any errors. From time to time, if our court
2 reporter misheard you or somehow made a mistake, then
3 you'll have an opportunity to correct, but you want to
4 be careful about making such substantial corrections as
5 changing a "yes" to a "no" or vice versa, because at
6 trial we'll be able to comment on those corrections to
7 the jury.

8 A Okay.

9 Q And also, if you don't understand a question,
10 feel free to ask me to rephrase it.

11 A Okay.

12 Q If you need a break, just let me know, and as
13 long as we don't have a question pending, you've
14 answered the question, we can take a break.

15 A Okay.

16 Q All right. Do you still live at 6255 Peachy
17 Canyon Road in Paso Robles?

18 A Yes.

19 Q And how long have you lived there?

20 A Nineteen years.

21 Q Nineteen years.

22 You went to high school in Paso Robles?

23 A Templeton.

24 Q Templeton High School?

25 A Uh-huh, yep.

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1 Q When did you graduate?

2 A '09.

3 Q 2009?

4 A Uh-huh.

5 Q Okay. Are you a student now?

6 A No.

7 Q Are you working?

8 A Yes.

9 Q Where do you work?

10 A Perry Ford in San Luis here.

11 Q That's an auto dealership?

12 A (Witness nods head up and down.)

13 Q How long have you worked there?

14 A Almost two years.

15 Q Okay. Do you remember around what time you
16 started?

17 A Probably, it was in November of 2010, I think.
18 It's been like a year and a half.

19 Q Okay. So you had a period between high school
20 graduation in 2009 and November 2010 when you started
21 working there.

22 Did you do anything in that interim?

23 A I went to community college for about a
24 semester. Then I stopped. And then I started working.

25 Q And what community college did you attend?

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1 A Cuesta. Cuesta College.

2 Q Where is that?

3 A The one I went to is in north county in Paso.

4 Q In Paso Robles?

5 A Uh-huh.

6 Q Okay. Do you have a title at Perry Ford?

7 A No.

8 Q What are your duties there?

9 A I just am a parts driver. I deliver parts
10 for -- to mechanics and customers, I guess.

11 Q So the dealership receives parts from a
12 distributor?

13 A From a big -- like the big Ford Motor Company
14 sends parts in, and I check them in. And I drive around
15 San Luis or Paso or around the county delivering them
16 and dropping them off.

17 Q Is that to other Ford dealerships or --

18 A To anybody who needs it. Like little mechanic
19 shops.

20 Q Got it.

21 So you do inventorying as well, then?

22 A Yes.

23 Q Anything else that you do there?

24 A Um, no, not at the moment.

25 Q So you still live at Peachy Canyon Road?

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1 A (Witness nods head up and down.)

2 Q Is that with your mom?

3 A Yes.

4 Q Who else lives there?

5 A My brother.

6 Q Just the three of you?

7 A Yes.

8 Q Are you helping your mom with the bills there?

9 A Somewhat. If she needs it, then I'll help her.

10 Q Does she need it?

11 A Not at the moment, no.

12 Q So no one else is helping your mom?

13 A No.

14 Q Is she helping you with money?

15 A Yes.

16 Q Anything beyond just living in the house?

17 A No.

18 Q But you're not paying her rent?

19 A No.

20 Q Is your mom helping anyone else besides you and

21 Ralph?

22 A No.

23 Q Do you have any hobbies?

24 A Um, I like to snowboard. I like to golf

25 occasionally. Um, no, just hang out. Not really

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1 anything.

2 Q Where do you snowboard?

3 A Sierra Summit or Tahoe.

4 Q Sierra Summit. How far is that from here?

5 A Close to four hours, three and a half hours.

6 Q And Lake Tahoe?

7 A Uh-huh.

8 Q You said you golf?

9 A Yes.

10 Q How often do you do that?

11 A Not very often anymore. Probably once a month
12 or so.

13 Q Do you do that with anyone else?

14 A Friends. My brother sometimes.

15 Q I understand you used to play golf with your
16 dad; is that right?

17 A Uh-huh, yes.

18 Q Did you ever go with your grandparents?

19 A Yes.

20 Q Do they still go?

21 A Yeah, they golf weekly.

22 Q Do you go with them still?

23 A I haven't.

24 Q Do you play sports?

25 A Not anymore.

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1 Q Played sports in high school?

2 A Played football for a little bit, played golf,
3 and played a little basketball.

4 Q Do you attend worship services?

5 A No.

6 Q Do you volunteer?

7 A No.

8 Q See friends?

9 A Yeah.

10 Q I'm just trying to get an idea of what keeps
11 you busy, what you're up to.

12 A Uh-huh.

13 Q Are you married?

14 A No.

15 Q Any kids?

16 A No.

17 Q In 2007 to 2008, did your dad have any
18 connection to the community, like associations with
19 clubs or organizations?

20 A Not that I recall.

21 Q Was he involved in any kind of activities?

22 A Um, no. He just golfed. Liked golfing. That
23 was about it.

24 Q When he was working, I understand he was
25 working at a plant?

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1 A Uh-huh.

2 Q Where was that?

3 A In Paso Robles.

4 Q What was the name of it?

5 A I think the last name it had was Lubrizol.

6 Q Can you spell that, please?

7 A L-u-b-r-i-z-o-l.

8 Q Thank you.

9 Was the plant, to your knowledge, affected by
10 the economy at all?

11 A I think it was a little bit. Not too bad it
12 didn't seem.

13 Q Did you hear about -- I mean, can you explain
14 what you mean?

15 A Like my dad would just say, like, they were
16 having like shortages, or like it wasn't as busy. It
17 wasn't being as busy. But it wasn't like too affected
18 where they were going to shut it down or anything.

19 Q Did your dad work shifts?

20 A He worked just from eight to like five or six
21 at night.

22 Q Did he ever have shorter days because of
23 shortages or --

24 A No. They were like all day.

25 Q So his work was consistent?

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1 A (Witness nods head up and down.)

2 Q Was he in a union?

3 A No.

4 Q According to the PFS, which I will mark as
5 Exhibit 1, you're claiming a loss of inheritance as
6 damages.

7 Do you want to take a look?

8 (Defendants' Exhibit 1 was marked for
9 identification.)

10 MR. ERNST: You're looking at?

11 MS. LOVE: Number 7.

12 MR. ERNST: What page?

13 MS. LOVE: It's page 5, number 7.

14 MR. ERNST: Just a minute. Take a short break.

15 MS. LOVE: Yes.

16 (Recess.)

17 MS. LOVE: We're back on the record.

18 Q Did your father's death cause you to lose any
19 inheritance that you might have otherwise received?

20 A No, just -- no.

21 MR. ERNST: Do you understand the question?

22 THE WITNESS: Like inheritance, do you mean
23 like his income?

24 MS. LOVE: I'll rephrase the question.

25 MR. ERNST: If you don't know the answer or do

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1 not understand the question, don't answer it.

2 We are alleging in the complaint you lost an
3 inheritance. And this is based on the family's
4 information. Because he died an early death, the income
5 that he would have generated over time would have
6 included money to the family unit. And necessarily,
7 over time, most likely that would have resulted in loss
8 of inheritance.

9 MS. LOVE: Mr. Ernst.

10 MR. ERNST: All this information will be
11 conveyed pursuant to expert testimony.

12 You can go ahead and answer the question.

13 BY MS. LOVE:

14 Q Are you aware that your parents had any
15 savings?

16 A Yes.

17 Q Were they regular savers?

18 A Yes.

19 Q Do you know what they were saving towards?

20 A Retirement. And like, at one point there was
21 college funds.

22 Q Are there still college funds?

23 A Um, I don't know. There's -- they are in like
24 bonds, like CD. I don't know what it is. I don't know
25 if it's in a college fund anymore, but it's still there

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1 in a different savings.

2 Q Okay. So you think the funds still exist?

3 A Yes.

4 Q Do they have any -- do you know if your parents
5 had any investments?

6 A No.

7 Q You don't know or they didn't?

8 MR. ERNST: If you don't know, don't guess.

9 THE WITNESS: I'm not guessing.

10 No, they didn't have any investments.

11 MR. ERNST: Do you understand what an
12 investment is? If you don't understand a word that
13 she's using, do not answer.

14 THE WITNESS: Well, I thought I understood.

15 MR. ERNST: Okay, go ahead.

16 BY MS. LOVE:

17 Q I'll rephrase. Are you aware that your parents
18 owned any stocks?

19 A Oh, yeah.

20 Q Yes, they did?

21 A Yes.

22 Q Are you aware that they owned any bonds?

23 A Um, I'm not aware.

24 Q Do you know whether your parents had any
25 properties at the time of your father's death?

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1 A Properties?

2 Q Like land?

3 A Yeah. We live on a ranch, so...

4 Q That's where you live?

5 A Uh-huh.

6 Q Is that the only property that you know that
7 your parents owned at the time of your father's death?

8 A Yes.

9 Q Are you aware of any change from the time of
10 your father's death until now with respect to the -- any
11 stocks that your family owns?

12 A I don't know anything about that.

13 Q You don't know about any changes?

14 A Huh-uh.

15 Q Have you ever been -- I asked you already.

16 Have you ever brought a lawsuit before?

17 A (Witness shakes head back and forth.)

18 Q Have you ever been sued?

19 A No.

20 Q Have you ever been convicted of a crime, either
21 a misdemeanor or a felony?

22 A Um --

23 MR. ERNST: Objection. It's an invasion of
24 privacy and it's compound.

25 BY MS. LOVE:

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1 Q Have you ever been convicted of a misdemeanor?

2 MR. ERNST: Objection. Privilege as a
3 juvenile.

4 BY MS. LOVE:

5 Q Have you ever been convicted of a misdemeanor
6 as an adult?

7 A No.

8 Q Have you ever been convicted of a felony as an
9 adult?

10 A No.

11 Q Have you ever filed a claim for Social Security
12 benefits of any type?

13 MR. ERNST: If you don't know, don't guess.

14 THE WITNESS: I don't know.

15 BY MS. LOVE:

16 Q Have you ever filed a disability claim with an
17 employer?

18 A No.

19 Q Have you ever filed a disability claim with an
20 insurance company?

21 A No.

22 Q Have you talked to anyone other than your
23 lawyers about this lawsuit?

24 A No.

25 Q You've never talked to your mother about this

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1 lawsuit?

2 A Yeah, but -- we talked about it, but not like
3 in depth. Like she kind of was dealing with it on her
4 own for a little bit because we didn't know how far it
5 was going to go.

6 Q Have you ever talked with your brother about
7 this lawsuit?

8 A No.

9 Q When did you talk to your mother about this
10 lawsuit?

11 MR. ERNST: Objection; vague.

12 In the presence of the lawyers or outside of
13 the presence of the lawyers?

14 BY MS. LOVE:

15 Q Have you ever talked to your mother about this
16 lawsuit outside of the presence of your attorney?

17 A Yes.

18 Q And with respect to those conversations, if
19 there were more than one, when were they?

20 A It's been a few occasions where probably it was
21 a while ago. I don't recall when.

22 Q Okay. And I'm going to ask you some questions
23 to see if we can get more specific. And if you can't
24 remember, that's fine. But I'm just going to try and
25 jog your memory.

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1 Would you be able to say that those
2 conversations were more than a year ago?

3 MR. ERNST: Objection; vague.

4 You're talking in the presence of the lawyer or
5 outside of the presence of the lawyer?

6 MS. LOVE: Okay.

7 Q With respect to the conversations with your
8 mother that you had about this lawsuit that were outside
9 of the presence of your lawyer, would you be able to
10 estimate that they happened more than a year ago?

11 A I'd say about a year ago.

12 Q Do you recall during those conversations that
13 you had with your mother about this lawsuit outside of
14 the presence of your lawyer, what you guys talked about?

15 A I don't recall.

16 Q Have you ever mentioned anything on the
17 internet about this lawsuit?

18 A No.

19 Q Not on a Facebook account?

20 A No.

21 Q Not on a MySpace page?

22 A No.

23 Q Did you have any role in the decision to bring
24 this lawsuit?

25 A No.

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1 Q Did anyone other than your lawyer discuss
2 bringing this lawsuit with you before it was filed?

3 A No.

4 Q Did you ever see your father's Digitek tablets
5 at any time while he was alive?

6 A Yes.

7 Q Did you see the Digitek tablets that he was
8 taking the month before he died, at any time?

9 A I don't recall.

10 Q Would you know what normal Digitek tablets are
11 supposed to look like?

12 A No.

13 Q Is that because you don't remember what they
14 looked like?

15 A (Witness nods head up and down.)

16 Q Do you remember whether your father's behavior
17 changed at all in the weeks and days before his death?

18 A I don't recall.

19 Q Have you ever read anything from the internet
20 or print media about Digitek?

21 A No.

22 Q You've never done any research online about
23 Digitek?

24 A (Witness shakes head from side to side.)

25 Q Have you done any research online about Digitek

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1 lawsuits?

2 A No.

3 Q Have you created or do you maintain a website?

4 A No.

5 Q Do you have a blog?

6 A No.

7 Q Do you have another social networking account,
8 like Facebook?

9 A I have a Facebook.

10 Q You have a Facebook account. Do you have a
11 MySpace account?

12 A I do, but I don't use it.

13 Q When did you stop using it?

14 A About a year ago.

15 Q About a year ago.

16 Do you remember when you opened it?

17 A Um, I was like 12 or 13 probably.

18 Q Were you -- did you use it -- were you an
19 active MySpace user?

20 A Yes.

21 Q Would you say you were an active MySpace user
22 from the age of 12 until you stopped using the account?

23 A No.

24 Q Did you have periods that you can recall where
25 you were more active on MySpace?

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1 A Yeah, when I -- probably like the first year or
2 two I was like on it all of the time. But after that I
3 never really got with it.

4 Q Do you have a Twitter account?

5 A No.

6 Q Do you have any other social networking
7 accounts?

8 A No.

9 Q When did you start using your Facebook account?

10 A Eight months ago, six months ago.

11 Q Are you an active Facebook user?

12 A Not really.

13 Q I guess I should perhaps ask you, then, how
14 frequently would you say you use Facebook?

15 A Once or twice a week.

16 Q And when you sit down, do you -- do you ever
17 do -- do you post a lot or do you mostly check other
18 people's pages?

19 A Just look at other people's pages and see
20 what's going on. Not really post anything myself.

21 Q Do you have any printouts, by any chance, of
22 your Facebook account?

23 A No.

24 Q Of course not.

25 Well, have you ever written any internet

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1 postings, status updates, notes, that relate to your
2 father's health?

3 A No.

4 Q Have you ever written any texts or e-mails that
5 relate to your father's health?

6 A What do you mean by his health?

7 Q Any illnesses or injuries?

8 A No, I don't think I have. No.

9 Q Have you ever written any internet postings or
10 status updates, notes, regarding your father's death?

11 A No.

12 Q Have you ever written any texts or e-mails
13 regarding your father's death?

14 A I have written texts. No e-mails.

15 Q Can you recall, other than texts that you may
16 have written to your lawyer, who you texted about your
17 father's death?

18 A On the day it happened, I texted friends and
19 some family. Um, that's all I can recall.

20 Q Do you recall what you said in those texts?

21 A Um, not really. Just that my father had passed
22 away, and that's basically it.

23 Q Okay. How were you and your family coping
24 after his death?

25 A Um, not good. It was rough for the first year.

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1 Probably first two years. Um, now it's getting a little
2 better. Starting to deal with it better. Everything
3 seemed to come back together kind of.

4 Q Have you written any status updates, anything
5 on the internet, about how you guys are doing with
6 respect to your father's death?

7 A No.

8 Q Any texts or e-mails about how you guys are
9 doing with respect to your father's death?

10 A No.

11 Q Have you written any internet postings or
12 status updates with respect to any cardiac glycosides?

13 A No.

14 Q Other than your attorney, did you talk or meet
15 with anyone to prepare for your deposition today?

16 A No.

17 Q Did you tell your employer where you are going
18 to be?

19 A Oh, yeah. Well, I told him -- yeah, I did. I
20 told him I had to come to a deposition today.

21 Q Okay. Was that all you discussed?

22 A Yes.

23 Q So you didn't discuss your deposition with your
24 mother?

25 A Not really.

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1 MR. ERNST: Outside of the presence of the
2 lawyers.

3 BY MS. LOVE:

4 Q Outside the presence of your lawyer, did you
5 discuss your deposition at all with your mother?

6 A No.

7 Q Did you review any documents to prepare for
8 your deposition?

9 A Documents, like?

10 Q Any pieces of paper that have to do with the
11 lawsuit?

12 A No.

13 Q Did you review anything to prepare for your
14 deposition?

15 A Um, no.

16 Q I'd like to talk a little bit about your family
17 medical history.

18 I understand that your father had heart
19 disease; is that correct?

20 A Yes.

21 Q Do you know what kind of heart disease he had?

22 A Um, I'm not certain.

23 Q If I asked you whether he had atrial
24 fibrillation, would that sound like something you were
25 aware of?

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1 A I've never heard that before.

2 Q Do you know whether any members of your
3 father's family had heart disease?

4 A Um, not that I'm aware of.

5 Q All right. I'm going to ask you a long list of
6 questions about various conditions. If you don't know
7 what they are, you can just say "I don't know." If you
8 don't know whether anyone in your family, your father's
9 side of the family has had these conditions, you can say
10 "I don't know."

11 But as to each question, if you can think of
12 one of your father's parents or grandparents who has had
13 the condition, or any of your father's siblings, that's
14 the group that I'm asking about. Okay?

15 So, as to any family member of your father's,
16 do you know whether anyone, a grandparent, a parent, a
17 sibling or a child had had diabetes?

18 A No.

19 Q Do you know whether anyone on your father's
20 side of the family has had coronary sclerosis?

21 A I don't know.

22 Q Do you know whether anyone on your father's
23 side of the family has had hypothyroidism or thyroid
24 disease?

25 A I don't know.

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1 Q Do you know whether anyone on your father's
2 side of the family has had gastrointestinal problems,
3 like ulcers or indigestion, chronic problems with?

4 A I don't know.

5 Q Okay. Do you know whether anyone on your
6 father's side of the family has had a medical diagnosis
7 of obesity?

8 A No.

9 Q No, they haven't or you don't know?

10 A I don't know.

11 Q Do you know whether anyone on your father's
12 side of the family has had kidney disease?

13 A I don't know.

14 Q Do you know whether anyone on your father's
15 side of the family has had chronic obstructive pulmonary
16 disease?

17 A I don't know.

18 Q Do you know whether anyone on your father's
19 side has had atrial fibrillation?

20 A I don't know.

21 Q Do you know whether anyone on your father's
22 side of the family has ever had atrial flutter?

23 A I don't know.

24 Q Do you know whether anyone on your father's
25 side of the family has had ventricular fibrillation?

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1 A I don't know.

2 Q Do you know whether anyone on your father's
3 side of the family has had a pacemaker?

4 A I don't know.

5 Q Do you know whether anyone in your father's
6 side of the family has had an electrolyte disorder?

7 A I don't know.

8 Q Do you know whether anyone on your father's
9 side of the family has had a heart attack?

10 A I don't know.

11 Q Do you know whether anyone on your father's
12 side of the family has had a reduced metabolism?

13 A I don't know.

14 Q Do you know whether anyone on your father's
15 side of the family has had low potassium levels, which
16 is also known as hypokalemia?

17 A I don't know.

18 Q Do you know whether anyone on your father's
19 side of the family has ever been diagnosed with
20 anorexia?

21 A No.

22 Q No, they have not?

23 A No.

24 Q Do you know whether anyone on your father's
25 side of the family has had cancer?

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1 A Yes.

2 Q And who was that?

3 A My dad's brother.

4 Q What is his name?

5 A Eric.

6 Q Eric McCornack?

7 A Uh-huh.

8 Q Do you know when he was diagnosed with cancer?

9 A Um, I'm not certain on that.

10 Q Do you know whether it was --

11 A It was --

12 Q -- within the last year?

13 A It was probably two or three years ago.

14 Q Do you know what type of cancer your father's

15 brother, Eric, was diagnosed with?

16 A I think it was testicular cancer.

17 Q Do you know how he might have been treated for

18 that cancer?

19 A I know he had chemotherapy.

20 Q He had chemotherapy?

21 A Yes.

22 Q Was it successful?

23 A Yes.

24 Q Is he in remission now?

25 A Yes.

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1 Q Good.

2 Do you know whether anyone on your father's
3 side of the family, besides your uncle Eric, has had
4 cancer?

5 A I don't know.

6 Q Do you know whether anyone on your father's
7 side of the family has had a stroke?

8 A I don't know.

9 Q I think we're done with this list.

10 MR. ERNST: Take a short break.

11 (Recess.)

12 MS. LOVE: Back on the record.

13 Q Do you know if any doctor ever told your father
14 that he had any health problems related to his weight?

15 A I don't know.

16 Q Do you know if your father expressed any
17 concerns about health problems related to his weight?

18 A Not that I recall.

19 Q Do you know if your mother ever expressed any
20 concerns about health problems related to your father's
21 weight?

22 A No.

23 Q You don't know?

24 A No, um, I don't think she did.

25 Q Okay. Do you know if any doctor ever advised

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1 your father to lose weight?

2 A Not that I know of.

3 Q Did your father ever express any concerns
4 himself about losing weight?

5 A No.

6 Q Did your father ever go on a diet to lose
7 weight?

8 A Yes.

9 Q Do you remember when that might have been?

10 A I don't recall when. It was a while ago.

11 Q Would you say -- would you say it was in --
12 within the last five years before he died?

13 A Yeah.

14 Q Do you remember what kind of a diet it was?

15 A It was the Atkins diet.

16 Q Do you remember, approximately, how long he did
17 that diet?

18 A I don't.

19 Q Did he have any success with that diet?

20 MR. ERNST: Objection; vague.

21 BY MS. LOVE:

22 Q Do you remember if your father was able to lose
23 any weight on the Atkins diet while he did it?

24 A Yes.

25 Q Do you have any idea what kind of weight he

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1 lost? How much weight he lost while he was on that
2 diet?

3 A No.

4 Q Do you know whether your father gained any
5 weight back when he stopped doing the diet?

6 A I don't recall.

7 Q Did your father ever use any tobacco products?

8 A Yes.

9 Q What products?

10 A Um, chewing tobacco. Like a Copenhagen.
11 That's it.

12 Q So your father never smoked cigarettes?

13 A No.

14 Q What about cigars?

15 A Occasionally.

16 Q Would you say that that is once a month or once
17 a week?

18 A Probably once a year.

19 Q Do you know when your father started using
20 chewing tobacco?

21 A I don't.

22 Q Did -- do you know how much chewing tobacco
23 your father used per day?

24 A I don't.

25 Q Do you remember how often your dad bought

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1 chewing tobacco?

2 A I don't recall.

3 Q Now, I don't use chewing tobacco myself so I
4 don't know how they sell it.

5 But did your father just buy the chewing
6 tobacco one can at a time?

7 A Yes.

8 Q Did your father ever stop using chewing tobacco
9 before his death?

10 A Yes.

11 Q Do you remember when that was that he stopped?

12 A I don't recall.

13 Q Would you say it was within the last five years
14 before he died?

15 A Yes.

16 Q Would you say it was within the last two years
17 before he died?

18 A Yeah.

19 Q So you think it might have been as late as
20 2007?

21 A Yes.

22 MR. ERNST: If you're not sure, don't guess.

23 THE WITNESS: I'd say 2007.

24 BY MS. LOVE:

25 Q 2006 to 2007 maybe?

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1 A Yeah.

2 Q Okay. Did he stop completely when he stopped
3 using chewing tobacco?

4 A No.

5 Q Did he use chewing tobacco occasionally after
6 2006 and 2007, that range?

7 A Yes.

8 Q Would you say that when he occasionally used
9 chewing tobacco after he stopped in 2006 and 2007, that
10 he used chewing tobacco once a month?

11 A I can't recall.

12 Q Do you think it was less than that? Less than
13 once a month that he might have occasionally used
14 chewing tobacco after the 2006-2007 time frame?

15 A I really don't know. I can't say.

16 Q Okay. Do you know what caused your father to
17 reduce the amount of chewing tobacco that he was using?

18 A My mom.

19 Q Can you elaborate on that?

20 A My mom wanted him to stop. So he tried to
21 stop. So he quit. And then he'd get the fake, it's
22 like fake chewing tobacco. So he'd get that instead.
23 It was just my mom and our family, we wanted him to
24 stop. So it was just family.

25 Q Did you ever talk to him about stopping using

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1 chewing tobacco?

2 A Um, not that I recall.

3 Q Did your mom --

4 A My mom and my brother.

5 Q So it was mainly your mom and your brother who
6 spoke to him about --

7 A I'd say mainly my mom spoke to him.

8 Q Did your father ever talk to you about using
9 chewing tobacco?

10 A No.

11 Q Do you know if he ever spoke to your brother
12 about using chewing tobacco?

13 A I don't know.

14 Q Now, you said your father was using fake
15 chewing tobacco. I'm not even sure what that is. I
16 guess we'll find out. But can you estimate,
17 approximately, when he started using that fake chewing
18 tobacco?

19 A I can't.

20 Q Would you say it was around the time he stopped
21 using --

22 A Yeah.

23 Q -- real chewing tobacco?

24 A Yeah.

25 Q So it might have been in the time frame of 2006

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1 to 2007 that he started using fake chewing tobacco?

2 A Yeah.

3 Q Did he use that fake chewing tobacco every day?

4 A No.

5 Q Would you say that when he started using that
6 fake chewing tobacco he used it once a week?

7 A Maybe a couple times a week.

8 Q In the month before your father died, did he
9 use fake chewing tobacco?

10 A I don't recall.

11 Q Did your father ever drink alcoholic beverages?

12 A Yes.

13 Q Do you know what kind of beverage he drank?

14 A Um, mostly just beer.

15 Q Did he ever drink wine?

16 A He wasn't big on wine, no. Not really.

17 Q Do you know how many drinks per day or per week
18 he liked to drink?

19 I'm sorry, let me rephrase that.

20 Do you know how many drinks per day your father
21 normally drank?

22 MR. ERNST: Objection; vague.

23 You can go ahead and answer the question if you
24 know.

25 THE WITNESS: I don't know.

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1 MR. ERNST: If you don't know, don't guess.

2 BY MS. LOVE:

3 Q During the month prior to your father's death,
4 would you say he drank every day?

5 A No.

6 Q During the month prior to your father's death,
7 would you say that he drank one or more alcoholic
8 beverages one day a week?

9 MR. ERNST: Objection; vague.

10 BY MS. LOVE:

11 Q Sorry. During the month before your father's
12 death, would you say that he drank once a week?

13 A Yeah.

14 Q During the month before your father's death,
15 you think he drank one drink a week?

16 A No. It could be more. It depended on what was
17 going on. He never drank a lot, but...

18 MR. ERNST: You've answered the question.

19 BY MS. LOVE:

20 Q Did you notice any change in your father's
21 alcohol consumption in the month before he died versus
22 prior to that time?

23 A I don't recall.

24 Q Do you remember any period of time where your
25 father's alcohol consumption increased or decreased

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1 substantially?

2 A No, I don't recall.

3 Q Did anyone ever encourage your father to reduce
4 his alcohol consumption, that you know of?

5 A I don't know.

6 Q Do you know whether a doctor ever spoke with
7 your father about his alcohol consumption?

8 A I don't know.

9 Q Did your father indicate any desire to reduce
10 his alcohol consumption?

11 A I can't recall.

12 Q So you don't recall him saying anything like,
13 "Oh, I shouldn't drink this. I shouldn't drink so
14 much"?

15 A Not really. No.

16 Q On an average workday, would you say that your
17 father drank coffee?

18 A Yeah.

19 Q Could you estimate, approximately, how many
20 cups of coffee your father might have drunk on an
21 average workday?

22 A I can't say.

23 Q Was it your father's habit to drink coffee in
24 the morning before he left for work, if you know?

25 A Yeah.

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1 Q Do you know, approximately, how much coffee he
2 had in the morning before he left for work on an average
3 workday?

4 A Maybe a cup or two.

5 Q Do you recall whether, on an average workday,
6 your father ever drank coffee at the end of the day when
7 he came home from work?

8 A Not that I recall.

9 Q Did your father ever drink tea?

10 A No.

11 Q Did he ever drink soda?

12 A Sometimes.

13 Q Do you know what kind of soda he used to drink?

14 A Um, Diet Pepsi.

15 Q Do you know how often he might consume a Diet
16 Pepsi?

17 A No more than one a day, I believe. Probably
18 one a day with lunch.

19 MR. ERNST: If you don't know, don't guess.

20 BY MS. LOVE:

21 Q Did your father ever drink something with
22 dinner in the evenings?

23 MR. ERNST: Objection; vague.

24 What are you talking about? Are you talking
25 about milk, water, alcohol, coffee, tea or what?

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1 BY MS. LOVE:

2 Q On an average workday, when your father came
3 home from work, did he have dinner?

4 A Yes.

5 Q Did your father ever consume any fluid with his
6 dinner, on an average workday?

7 A Yes.

8 Q Do you know whether he had a usual drink that
9 he drank with his dinner on an average workday?

10 A Milk.

11 Q Milk.

12 MR. ERNST: Let's take a short break.

13 (Recess.)

14 MS. LOVE: Back on the record.

15 Q Do you know if your father, on an average
16 workday, had a habit of drinking any water over the
17 course of the day?

18 A I don't know.

19 Q So just to review your testimony, you think
20 that he had one to two cups of coffee in the morning
21 before he left for work; is that correct?

22 A (Witness nods head up and down.)

23 Q Then you think that on an average day he might
24 have had a Diet Pepsi with his lunch, on an average
25 workday?

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1 A Yes.

2 Q And then on an average workday, you think he
3 might have had a glass of milk with his dinner?

4 A Yes.

5 Q And do you know if he had a habit of drinking
6 anything else during an average workday?

7 A I don't know.

8 Q Do you know if his habits were different on the
9 weekends, in terms of what he drank on an average
10 weekend versus an average weekday?

11 A I don't recall.

12 Q Did your father have a habit of exercising at
13 any point?

14 MR. ERNST: Define "exercise."

15 BY MS. LOVE:

16 Q Did your father have a habit of engaging in any
17 physical activity likely to raise his heart rate, such
18 as running or playing sports, or using a gym?

19 A Um, he played softball occasionally, about once
20 a week. Then he probably would golf about once a week,
21 too.

22 Q With respect to the softball, did your father
23 have -- when would you say that your father started
24 playing softball regularly once a week?

25 MR. ERNST: If you know.

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1 THE WITNESS: I really don't recall.

2 BY MS. LOVE:

3 Q Did your father play softball once a week
4 throughout the course of his -- until he died?

5 A Um, I'd say he -- I think he stopped a couple
6 years before his death.

7 Q Did your father play golf once a week until he
8 died?

9 A Yes.

10 Q Did your father ever do ranch work in the last
11 two years before he died?

12 A I don't recall.

13 Q If your father had been doing ranch work, can
14 you describe what that might be?

15 A Um, just discing the orchard, or maybe grading
16 the road. That's about it.

17 Q Okay. So can you explain what grading the road
18 might entail?

19 A Um, he would just get on a grader. We have a
20 big grader. And he'd just go up and down our road and
21 grade the road. And then...

22 Q So it's a machine, the grader is a machine?

23 A Yeah, it's like a big tractor kind of.

24 Q So he would get on the grader and ride the
25 grader up and down the road?

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1 A Yeah.

2 Q Okay. And discing the orchard, does that
3 entail using nets under the trees, placing nets under
4 the trees?

5 A He would -- you get on a tractor, and you've
6 got a bunch of discs. I'm not really too familiar with
7 this so I don't really know. You just pull it through
8 and you knock all the weeds down throughout the orchard
9 and you clean up the soil and till up the soil.

10 Q So discing the orchard would also entail
11 getting on a tractor or machine of some sort and using
12 that as the primary means of work?

13 A Yes.

14 Q Okay. Can you ever remember a time when your
15 father had to stop a physical activity because of
16 difficulty breathing?

17 A I don't recall.

18 Q Can you recall a time when your father had to
19 stop a physical activity because he was dizzy?

20 A I can't recall.

21 Q Can you recall a time when your father had to
22 stop a physical activity because he was fatigued?

23 A I don't recall.

24 Q Did your father ever have to stop doing
25 something that he was doing because he was too tired?

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1 A I don't recall.

2 Q Do you know whether any doctor ever advised
3 your father to exercise for his health?

4 A I don't know.

5 Q Other than the ranch work that we've discussed,
6 do you know if your father ever did any work around the
7 house?

8 A He did yardwork, mowing the lawns, light weeds
9 and watering the plants.

10 Q To mow the lawns, was he riding a --

11 A A ride-on mower.

12 Q A ride-on mower, okay.

13 And did he use any machines to assist with the
14 weeding as well?

15 A A weed whacker.

16 Q Okay. Did your father have any hobbies?

17 A Just golf.

18 Q And softball?

19 A And softball.

20 Q Did your father ever go hunting?

21 A Yes.

22 Q How often in a year would you say, on average,
23 your father went hunting?

24 A Maybe two.

25 Q Did you ever go hunting with him?

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1 A Yes.

2 Q Did you go with him twice a year on average?

3 A Um, no.

4 Q So sometimes you went with him and sometimes
5 you didn't?

6 A Yeah.

7 Q Okay. Did your father, when your father went
8 hunting with you, did you walk a lot?

9 A We were in a Jeep.

10 Q A Jeep.

11 MS. LOVE: Go off the record.

12 (Ms. McCornack and Ralph McCornack enter the
13 deposition room.)

14 MS. LOVE: Back on the record.

15 Q Mr. McCornack, I'm going to ask you to recall
16 some of the details regarding the day that you left for
17 your camping trip before your father died. Okay?

18 And as a lead up to that, can you tell me, if
19 you know, what your father's usual routine was with
20 respect to taking his medicines?

21 A Um, he'd take it once in the morning and he'd
22 take it once before he went to bed.

23 Q And when he took his medicine in the morning,
24 did you ever see that?

25 A Yes.

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1 Q Did anyone else ever see him take his medicine
2 in the mornings?

3 A Yes.

4 Q Who?

5 A Um, my mom and my brother.

6 Q How often would you say, on average, in a week,
7 you saw your father take his medicines in the mornings?

8 A Probably close to every day.

9 Q Do you recall where your father kept his
10 medicines?

11 A In the medicine cabinet.

12 Q And where was that in the house?

13 A In the kitchen.

14 Q So he took the medicine in the mornings, in the
15 kitchen?

16 A Uh-huh.

17 Q And did he drink something with his medicines
18 to swallow them?

19 A Water.

20 Q Water.

21 Did he take his medicines -- can you recall,
22 approximately, what time he took his medicine in the
23 morning?

24 A I can't recall.

25 Q Would you say it was before or after he ate

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1 breakfast?

2 A I don't remember.

3 Q Okay. Now, you said that he took his medicines
4 also in the evenings. Did you ever see him take his
5 medicine in the evening?

6 A Yes.

7 Q Did anyone else ever see him take his medicine
8 in the evening?

9 A Yes.

10 Q Who?

11 A My mom and my brother.

12 Q And when he took his medicine in the evenings,
13 did he also take that in the kitchen?

14 A Yes.

15 Q And did he drink something then to swallow?

16 A Yes.

17 Q Was it water?

18 A Water and milk probably.

19 Q How often in the evenings would you say that
20 you saw your father take his medicine in an average
21 week?

22 A Close to every day.

23 Q And is that because you didn't see him take his
24 medicines or you think sometimes he missed his
25 medicines?

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1 MR. ERNST: No. He said close to every day.

2 BY MS. LOVE:

3 Q Okay. So were there days when you didn't see
4 your father take his medicine --

5 A Yeah.

6 Q -- in the evenings?

7 A Yeah, just because I wasn't around him taking
8 it.

9 Q So you have no reason to think that your father
10 missed his medicines?

11 A Oh, no.

12 Q Did you ever see your father take medicines in
13 the middle of the day?

14 A No.

15 Q Are you aware that he had any medicine to take
16 in the middle of the day?

17 A I'm not aware.

18 Q Did your father have any complaints about his
19 health in the year before he died?

20 A I don't recall.

21 Q Did he ever complain about being tired in the
22 year before he died, if you know?

23 A I don't know.

24 Q Do you recall ever hearing your father complain
25 about being dizzy in the year before he died?

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1 A I don't recall.

2 Q Did your father ever have a problem with nausea
3 in the year before he died?

4 A I don't recall.

5 Q Did you ever see your father vomit in the year
6 before he died?

7 A I don't know. I don't recall.

8 Q Can you think of any -- anything unusual in the
9 month before your father's death with respect to how he
10 was feeling or any complaints about his health?

11 A No.

12 Q Now, on March 22nd, 2008, were you preparing to
13 go on a camping trip with your family?

14 A Yes.

15 Q Did you assist in any way in the preparations
16 to make that trip?

17 A Yes.

18 Q What did you do?

19 A Loaded up the trailer, got all -- just got
20 everything ready to go. Hooked the truck up to the
21 trailer. Um, yeah.

22 Q So when you say you loaded up the trailer, do
23 you mean that you packed your clothes into the trailer?

24 A Clothes and all of the food and the drinks.

25 Q So were you carrying groceries into the

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1 trailer?

2 A Um, I don't recall if I carried any groceries
3 in myself.

4 Q Okay. What kinds of things would you put into
5 the trailer then, besides clothes and food, if anything?

6 A Golf clubs. We put a barbecue, horseshoes,
7 just stuff like that.

8 MS. LOVE: Let's go off the record.

9 (Discussion held off the record.)

10 MS. LOVE: We'll go back on the record.

11 Q Do you recall, approximately, what time on
12 March 22nd, 2008, that you started loading up the
13 trailer and hooking it up to the truck, was it?

14 A Um, I don't recall.

15 Q Okay. Would you say it was approximately
16 between 7 a.m. and 10 a.m.?

17 A Yeah.

18 Q Do you recall what time you woke up that
19 morning?

20 A I don't.

21 Q So while you were loading up the trailer and
22 hooking it up to the truck, did anyone assist you with
23 that?

24 A My dad and my brother and my mom. We were all
25 helping.

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1 Q Okay. Do you remember specifically what your
2 father did with respect to preparing for the camping
3 trip?

4 A I don't.

5 Q Does hooking the trailer up to the truck
6 involve any kind of difficult physical exertion?

7 A No.

8 Q So you just back up the truck to the trailer
9 and hook it up?

10 A Uh-huh.

11 MR. ERNST: "Yes"?

12 THE WITNESS: Yes.

13 BY MS. LOVE:

14 Q Where was this all taking place that you were
15 loading up the trailer and hooking it up to the truck?

16 A Um, our front yard, in front of the house.

17 Q Are you -- do you know who packed your father's
18 things into the trailer?

19 A Um, I don't know.

20 Q Do you know who packed your father's medicines?

21 A He did.

22 Q He did.

23 Did you see him do that?

24 A I didn't.

25 Q How do you know he did that?

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1 A Because he's the one that always just did it.
2 He took care of his own medicine. That was his thing.
3 He always made sure he had it.

4 Q The morning of the camping trip, did you see
5 your father take his medicine in the kitchen?

6 A I don't recall.

7 Q Did you see him eat or drink anything before
8 you left?

9 A I don't recall.

10 Q I may have already asked you this, but do you
11 recall, approximately, when you left the house for the
12 trip?

13 A I don't remember.

14 Q Do you think it was before lunch?

15 A Yeah.

16 Q Was it before breakfast?

17 A I don't recall.

18 Q Where did you go camping?

19 A Smith Woods up by Santa Cruz.

20 Q Okay. Did you drive directly without stopping
21 between your home and the campsite?

22 A No.

23 Q You stopped somewhere?

24 A (Witness nods head up and down.)

25 Q Do you recall where you stopped?

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1 A We stopped at a rest stop and met up with the
2 other people that were going with us. And then after
3 that we stopped in King City and we got food.

4 Q Okay. Do you know approximately where the rest
5 stop was?

6 A I think it's a little before San Miguel or a
7 little after San Miguel.

8 Q Is there anything else there besides a rest
9 stop?

10 A No.

11 Q So there are no coffee shops or --

12 A No.

13 Q -- food places?

14 A No.

15 Q Did your dad have anything to drink in the car?

16 A I don't remember.

17 Q Did you see him eat anything in the car?

18 A Don't recall.

19 Q Did he have the habit of chewing sunflower
20 seeds or anything like that while he was in the car?

21 A No.

22 Q Did he have a Thermos or anything that he
23 normally carried with him in the car?

24 A No.

25 Q Now, when you got to the rest stop and you met

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1 up with the other people in your party, did you get out
2 of the car at all?

3 A I did. I went to the bathroom.

4 Q Did your father get out of the car?

5 A He did.

6 Q Was that just to stretch your legs or was there
7 something else you were doing there?

8 A He got out to talk to the other people we met
9 up with. He looked, walked around the truck and trailer
10 to make sure everything was okay.

11 Q So it was a relatively brief stop at the rest
12 stop then?

13 A Yeah.

14 Q Would you say it was about 20 minutes?

15 A Yeah.

16 Q So then you got back in the car. Everyone got
17 back in the car and your family continued to drive to,
18 did you say King City?

19 A Yes.

20 Q Would you -- can you estimate, approximately,
21 how long you were in the car from the time you left your
22 driveway until you got to King City?

23 MR. ERNST: Objection. Keep going. Misstates
24 his testimony. It's a truck. It's not a car. But you
25 keep doing it.

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1 BY MS. LOVE:

2 Q Pardon me.

3 Can you estimate, approximately, how long you
4 were driving, from the time you left your driveway at
5 your home, until you reached the stop in King City?

6 A Um, no more than an hour.

7 Q Okay. And when you got to the stop in King
8 City, do you recall where you stopped exactly?

9 A I don't recall.

10 Q Was it a restaurant?

11 A Yes.

12 Q And you don't remember the name of it?

13 A No.

14 Q Approximately how long, if you can remember,
15 were you stopped in King City?

16 A No more than an hour, I'd say.

17 Q Okay. Do you recall, did you eat breakfast in
18 King City?

19 A I don't know if it was necessarily breakfast,
20 but we ate.

21 Q Okay. So you had a meal in King City?

22 A Yeah.

23 Q And are you not sure whether it was breakfast
24 because it was later in the day?

25 A Yeah.

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1 Q So you think maybe it was more like lunch?

2 A Lunch or brunch or something.

3 Q Okay. Okay. But you didn't eat anything --
4 did you have anything to eat before you stopped in King
5 City?

6 A No.

7 Q And do you know if your dad had anything to eat
8 before you stopped in King City?

9 A I don't know if he did.

10 Q Okay. Do you recall whether your dad had
11 anything to drink while you were stopped at the
12 restaurant in King City?

13 A I don't recall.

14 Q Do you remember what he ate?

15 A I don't.

16 Q After you finished your meal in King City, what
17 happened next?

18 A Um, we started driving farther north up to
19 Santa Cruz.

20 Q So you got back in the truck and you drove to
21 the campsite?

22 A Uh-huh.

23 Q Did you make any stops along the way between
24 King City and the campsite?

25 A I don't recall.

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1 Q Now, the campsite, would you please describe
2 for me, as best you can, how large the area was of your
3 campsite?

4 A Um.

5 Q Just so I can get a picture.

6 A It was pretty big. It went around in a circle,
7 like a half circle kind of. And I don't know. Like --
8 do you mean like --

9 Q Um, would you say that you had -- okay.

10 Let me be more clear. You had a number of
11 people with you in your party?

12 A Yes.

13 Q Did everyone share one campsite or did you have
14 several campsites, if you know?

15 A It was like a big campsite, but there was
16 several different campsites in it. It was like a
17 secluded little spot kind of.

18 Q Okay. Can you describe the terrain? Was it
19 flat? Was it hilly?

20 A It was flat.

21 Q It was flat. Was it wooded?

22 A Yes.

23 Q Was there a lot of shade or was it very sunny?

24 A Um.

25 Q Or both?

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1 A Kind of both, yeah.

2 Q So there were some shady parts and then there
3 were some very sunny parts?

4 A Yes.

5 Q Did anyone besides your family bring a trailer
6 with them --

7 A Yes.

8 Q -- in your party?

9 Can you tell me how many trailers there were?

10 A There were four or five.

11 Q Okay. So besides your family, who else had a
12 trailer with them?

13 A Um, my grandparents and my uncle.

14 Q Is that your uncle Eric?

15 A Yes.

16 Then my dad's best friend. And then there's
17 some of my uncle's friends that came along, too.

18 Q So what's the name of your dad's best friend?

19 A Sean Koehler.

20 Q Sean Koehler?

21 A (Witness nods head up and down.)

22 Q Can you spell Koehler, please?

23 A K-o-e-h-l-e-r.

24 Q Thank you.

25 Did Mr. Koehler come with his family?

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1 A Yes.

2 Q And you said that your uncle's friends were
3 also there?

4 A Yes.

5 Q And who are they?

6 A I don't know their first names, but last name
7 is Fazio.

8 Q Can you --

9 A F-a-z-i-o.

10 Q Okay. Thank you.

11 So the campsite was large enough for,
12 approximately, five trailers?

13 A Yes.

14 Q And approximately five trucks to tow them?

15 A Yes.

16 Q Was there an eating area?

17 A Yes.

18 Q Was it just one eating area or were there
19 multiple eating areas?

20 A We made one eating area.

21 Q Okay. So when you arrived at the campsite,
22 what did you do?

23 A When we first got there, we unloaded
24 everything. Set up all of the trailers, and got
25 everything just set up. And then after that, started

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1 barbecuing and eating. And then we were just relaxing
2 after that.

3 Q Okay. So when you say that you unloaded
4 everything, are you talking about furniture?

5 A Um, yeah, we unloaded chairs, and we unloaded,
6 like the ice chests out of the trailer. We had to get
7 the trailer set up, hook up the electrical and all that.
8 And that was it.

9 Q Okay. So you set up an eating area. Did you
10 bring a table with you?

11 A There were tables there.

12 Q There were tables there. And so did you just
13 put chairs around the table or were there benches?

14 A They were like picnic benches.

15 Q Okay. Was there anything strenuous at all
16 about unloading the trailer?

17 A No.

18 Q Do you remember whether you were sweating that
19 day?

20 A Um, I don't recall.

21 Q Do you remember at all, was it a sunny day?

22 A I don't remember.

23 Q Okay. So, after you finished setting up,
24 hooking up the electrical and taking out the chairs and
25 the ice chests, which were probably full; is that right?

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1 A Yes.

2 Q You just started relaxing?

3 A Uh-huh.

4 Q Did you take out the horseshoes?

5 A Um, not that I recall.

6 Q Did anyone play golf while you were there that
7 day?

8 A No.

9 Q Do you know if anyone put out any snacks in the
10 single eating area?

11 A Yeah.

12 Q Do you remember what they were?

13 A I don't remember.

14 Q Do you remember whether or not your dad ate any
15 snacks?

16 A I don't recall.

17 Q Do you remember seeing your dad drink anything
18 when you got to the campsite?

19 A I don't recall.

20 Q Do you think -- well, do you think your dad
21 consumed any -- anything to drink at all from the time
22 that you arrived in the campsite until he passed away?

23 A Yes.

24 Q Do you remember what he may have drank in that
25 time?

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1 A Maybe a couple beers. I don't really know. I
2 didn't see him -- I don't remember what I saw him
3 drinking or anything.

4 Q Did you see him drinking any soda?

5 A I can't remember.

6 Q Okay. So you think there may have been some
7 snacks out?

8 A Yes.

9 Q When you got to the campsite, did you have any
10 meals there?

11 A I ate dinner.

12 Q Okay. So you had one meal while you were at
13 the campsite?

14 A Yes.

15 Q Would you say -- did everybody eat together all
16 at the same time?

17 A No.

18 Q So people were making themselves plates and
19 eating at their leisure?

20 A Yeah.

21 Q Do you know, approximately, what time dinner
22 was prepared?

23 A I can't recall.

24 Q Now, you brought a barbecue with you; right?

25 A Yes.

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1 Q So you unloaded the barbecue and you set up the
2 barbecue. Do you know approximately where that was, in
3 relation, let's say, to someone's trailer?

4 A I can't recall.

5 Q Okay. Do you remember what was made for
6 dinner?

7 A I don't remember.

8 Q Now, did people kind of bring their own dinner
9 or did you guys make a communal dinner that everyone
10 shared?

11 A Yes.

12 Q So you made a communal dinner that everyone
13 shared?

14 A Yes.

15 Q And that involved something that you might have
16 barbecued?

17 A Yes.

18 Q Did you barbecue hamburgers?

19 A Yes.

20 Q Did you barbecue hot dogs?

21 A I don't -- no, I don't think so.

22 Q You barbecued some kind of meat?

23 A Yes.

24 Q Do you remember if there were any chips?

25 A Yes.

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1 Q Did somebody make potato salad?

2 A I don't recall.

3 Q But there were some side dishes besides just
4 the meat?

5 A Yes.

6 Q Do you know if there were any vegetables?

7 A I can't recall.

8 Q Did you see your dad eat dinner that evening?

9 A I don't remember.

10 Q Okay. Can you tell me, if you remember, were
11 people eating mainly in the eating area or were people
12 eating somewhere else?

13 A Mainly in the eating area.

14 Q Okay. So you think if your dad had dinner, it
15 was probably in the eating area, if you know?

16 A I can't recall.

17 Q You don't have to guess. It's okay.

18 Do you know who cooked the food?

19 A Um, my dad barbecued.

20 Q Anybody help him?

21 A Sean.

22 Q Okay. That's Sean Koehler?

23 A Yeah.

24 Q Do you think the rest of the food was
25 preprepared, like at home, and then you just brought it

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1 with you?

2 A Um, I can't remember.

3 Q Okay. Now, you mentioned that you had unloaded
4 some ice chests?

5 A Yes.

6 Q So those were outside of the trailers; right?

7 A Yes.

8 Q And did anyone have any refrigerators in the
9 trailers?

10 A Yes.

11 Q So maybe there were some drinks in the fridge
12 as well as in your trailer?

13 A There may have been.

14 Q Do you know if anyone brought or made mixed
15 drinks that evening?

16 A Um, I can't recall.

17 Q Had you ever gone camping with this particular
18 group of people before?

19 A Most of them.

20 Q Was it their habit to have mixed drinks, if you
21 know?

22 A Um, I don't know.

23 Q You didn't see your father eat dinner; is that
24 correct?

25 A Yes.

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1 Q Did you see your father take his medicine that
2 evening?

3 A I didn't.

4 Q Do you know if he took his medicine that
5 evening?

6 A Yes, he did.

7 Q How do you know?

8 A Because my brother saw him.

9 Q Okay. So your brother told you that he saw
10 your father take his medicine?

11 A Yes.

12 Q After the group had eaten dinner, can you tell
13 me what you did?

14 A Um, most of the other kids were playing a Rock
15 Band. We had a TV set up. And then I was just sitting
16 around the fire.

17 Q Okay.

18 A Just relaxing.

19 Q Did your family bring up the TV?

20 A Um, no.

21 Q So did you or your father assist in any way in
22 unloading the TV?

23 A No.

24 Q Do you remember, approximately, what time your
25 father went to bed?

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1 A I can't recall.

2 Q Did your father play Rock Band with anybody?

3 A Yes.

4 Q Do you know, approximately, how long he was
5 doing that?

6 A Ten minutes.

7 Q Briefly. Do you know what he was doing between
8 the time that he barbecued the hamburgers and played
9 Rock Band?

10 A I don't.

11 Q When you ate dinner, was it still light
12 outside?

13 A Dusk.

14 Q Dusk. So getting dark?

15 A Yeah.

16 Q And I'm sorry, what time did you go to bed, if
17 you remember?

18 A Um, probably around 11:30 or 12.

19 Q Okay. And I'm sorry, but do you recall what
20 time your dad -- how long before your dad went to bed?

21 A I can't recall how long before.

22 Q Okay. So when you went to bed, where was that?

23 A In the back of our trailer.

24 Q Okay. Is that like a popout?

25 A Um, it's a -- my parents' bedroom is over here,

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1 and me and my brother had bunk beds in the back.

2 Q Okay.

3 A Yeah.

4 Q How far would you say that was from your
5 parents' bedroom, approximately?

6 A 10 yards maybe.

7 Q Okay. Were you able to hear your parents in
8 their bedroom?

9 A Yes.

10 Q Were they sleeping?

11 A Yes.

12 Q But you could hear them?

13 A Well, if they were to talk, yeah, I could hear
14 them.

15 Q Did you hear your father making any sounds?

16 A Yes.

17 Q What sound?

18 A Gasping for breath, couldn't breathe. Sounded
19 like he was choking.

20 Q So that was the first sound that you heard that
21 evening?

22 A Yes.

23 Q From your parents' bedroom?

24 A Yes.

25 Q Okay. And how long, approximately, after you

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1 had gone to bed did you hear that, if you know?

2 A Hour or two.

3 Q An hour or two.

4 Okay. Who was in the trailer at the time?

5 A Um, me, my brother, my mom and my dad.

6 Q Okay. Can you explain what happened when you
7 heard the gasping for breath from your father?

8 A Um, me and my brother woke up. I called 911.
9 My brother ran outside to wake everybody else up. And
10 then everybody came in. The ambulance came. Um, that's
11 all I can recall.

12 Q Okay. Did you call 911 from inside the
13 trailer?

14 A I did.

15 Q You used a cell phone?

16 A Yes.

17 Q Do you know, approximately, how long it was
18 between the time that you made the phone call and when
19 the first responders arrived?

20 A Um, I can't -- I can't remember.

21 Q Was it the paramedics that arrived first?

22 A Yes.

23 Q And did they come into the trailer?

24 A Yes.

25 Q Was your father -- when you first heard the

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1 gasping for breath, your father was in bed?

2 A Yes.

3 Q Was he still in bed when the paramedics
4 arrived?

5 A No, we had moved him onto the floor.

6 Q And why did you do that?

7 A To do CPR.

8 Q Okay. So someone was performing CPR on your
9 dad.

10 A Yes.

11 Q And who was that?

12 A Um.

13 Q If you recall?

14 A I can't recall.

15 Q Do you know where your mom was at the time that
16 someone was performing CPR on your dad?

17 A She was right there. Right next to him.

18 Q Okay. And you were in the trailer this whole
19 time until the paramedics arrived?

20 A Not the whole time.

21 Q Where did you go in the interim?

22 A I stepped outside for a little bit.

23 Q Okay. And you were just waiting outside?

24 A Yes.

25 Q Were you there when your father was moved to

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1 the floor?

2 A Yes.

3 Q Do you know who else was in the trailer besides
4 you and your mom at the time that your dad was on the
5 floor?

6 A Um, it was me, my mom and my uncle. That's all
7 I can remember for sure.

8 Q Your uncle Eric?

9 A Yes.

10 Q Okay. When the paramedics arrived, did they --
11 what did they do?

12 A Um, they went in there. They made all of us
13 get out. I think that -- I don't really recall what
14 they did, actually.

15 Q So you weren't there to see what they did?

16 A Yeah, I wasn't there.

17 Q So were they alone in the trailer with your
18 dad?

19 A Yes.

20 Q Do you recall what happened next?

21 A Um, I don't. It's blurry right about there.

22 Q Okay. Other than the paramedics, did any other
23 authorities come that evening?

24 A I can't recall.

25 Q Were you outside of the trailer the whole

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1 night?

2 A Yes. After that happened in our trailer, I
3 went and slept in my grandparents' room in their
4 trailer. We all went in there.

5 Q So was your dad ever taken to the hospital?

6 A Um, no. I don't think so.

7 Q Do you know where it was that he was pronounced
8 dead?

9 A Um, I can't recall for sure, but I think it was
10 at the campsite.

11 Q Okay. Did anybody remove your dad from the
12 campsite?

13 A Um, paramedics.

14 Q Okay. Do you know, approximately, how long it
15 was that they -- the paramedics were there?

16 A I don't.

17 Q But they took away your dad?

18 A Yes.

19 Q And then was it before or after that that you
20 went to sleep in your grandparents' trailer?

21 A After.

22 Q Okay. And so you said that you and your
23 brother and your mom all went to sleep in your
24 grandparents' trailer?

25 A I don't recall what they did, but I went up and

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1 laid down on their bed.

2 Q Okay. I'm really sorry.

3 Do you want to take a break?

4 A No, it's okay.

5 Q So after you went to lay down in your
6 grandparents' trailer, were you there the whole night?

7 A Yes.

8 Q Okay. And what happened in the morning?

9 A Um, we got up and packed everything back up and
10 we left.

11 Q So you went home after that?

12 A Yeah.

13 Q When you went home, do you recall what you did
14 in the week or so after your dad passed away?

15 A I have no idea.

16 Q Okay. You weren't in school?

17 A No.

18 Q You were home a lot during that time?

19 A I would say so, yeah.

20 Q Do you recall who else was there?

21 A Um, my mom, my brother, a lot of family came
22 over.

23 Q Do you recall when you went back to school?

24 A Um, I think it was two weeks after.

25 Q Okay. In those two weeks, did you come to have

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1 an understanding about why your father had passed away?

2 A Can you rephrase that?

3 Q Sure.

4 In the two weeks between when your dad died and
5 when you went back to school, did anyone ever give you
6 an answer to what was the cause of your dad's death?

7 A I just heard that it was cardiac arrest.

8 Q Do you recall who you heard that from?

9 A I don't.

10 Q Did you ever see an autopsy report?

11 A No.

12 Q Did you know that an autopsy was done?

13 A Yes.

14 Q Did you discuss the cause of death with anyone
15 in your family?

16 A What do you mean "discuss"?

17 Q Well, did anybody talk about your father's
18 cause of death, either in front of you or with you?

19 A Um, not that I recall. No.

20 Q Did you learn about a recall of Digitek at any
21 time?

22 A I heard about it, yes.

23 Q Do you recall when you heard about it?

24 A I don't.

25 Q Do you know whether it was within a week of

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1 your dad's passing away?

2 A I can't recall.

3 Q Would you say, maybe, it was within the first
4 six months after your dad passed away?

5 A Yeah.

6 Q And did you ever see a letter about the Digitek
7 recall?

8 A I think I did, yes.

9 Q Was it from a pharmacy, if you know?

10 A I can't recall.

11 Q What was your reaction when you saw that
12 letter?

13 A Kind of mad, sad, upset, confused, wanted to
14 know what really happened.

15 Q Why were you mad?

16 A Because the whole thing could have been
17 avoided.

18 Q So did you think that the Digitek had some role
19 in your father's death?

20 A Yeah.

21 Q And that was the gist of the letter?

22 A Um, no -- yeah.

23 Q Was it just the letter or was it something else
24 as well?

25 A Like do you mean, like, the letter that made

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1 me...

2 Q Let me rephrase.

3 When you saw the letter and you got mad,
4 because you felt that your father's death could have
5 been avoided, did you think that it was the Digitek that
6 caused him to have cardiac arrest?

7 A Yes.

8 Q And did you think that there was any other
9 reason that he might have had cardiac arrest?

10 A No.

11 Q Have you ever talked to anyone at Actavis or
12 Mylan?

13 A No.

14 Q Have you ever heard of Actavis or Mylan?

15 A No.

16 Q Other than your attorney, did anyone ever
17 discuss the Digitek recall with you?

18 A No.

19 Q Do you remember anyone discussing the Digitek
20 recall in front of you other than your attorney?

21 A Not that I recall.

22 Q So when you saw the recall letter, you were
23 feeling mad and confused and upset. Did you discuss
24 that with anyone?

25 A Kind of with my family, talked about it.

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1 That's it.

2 Q Do you recall who in your family you spoke to
3 about it?

4 A I think me and my mom and my brother talked
5 briefly about it as a group.

6 Q Do you recall what you all said in that
7 discussion?

8 A I don't.

9 MR. ERNST: It's 12:04. How much longer do you
10 expect to be?

11 MS. LOVE: I'd say 15 or 20 minutes, if that.

12 MR. ERNST: Tiffany, how long do you expect to
13 be?

14 MS. LOVE: Um, not very long, if at all. Not
15 more than a couple minutes.

16 MR. ERNST: Okay. Why don't we just continue.

17 MS. LOVE: I think that's a good idea.

18 Q Earlier we discussed your dad's habits about
19 taking his medicines. Do you remember him taking his
20 Digitek versus the other medicines?

21 A What do you mean?

22 Q Could you distinguish your dad's Digitek from
23 his other medicines, from looking at them?

24 A I personally couldn't.

25 Q Did your dad take his medicines together?

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1 A Yes.

2 Q And you said earlier that he took his medicines
3 in the morning and also in the evening.

4 Do you remember, approximately, the time of day
5 that he usually took his medicines in the morning?

6 A I can't recall.

7 Q Do you know, approximately, what time he left
8 in the morning for work?

9 A About 7:30.

10 Q So would he take his medicines before 7:30 when
11 he left for work?

12 A Yeah.

13 Q And do you recall, approximately, what time you
14 might eat dinner on an average day?

15 A Um, between 6 and 7:30.

16 Q Okay. And did your father take his medicines
17 before dinner?

18 A I can't recall.

19 Q Okay. So it might have been before or it might
20 have been after dinner?

21 A Yes.

22 Q This might sound strange, but do you remember
23 in the last month before your dad passed away what an
24 average dinner might consist of at your house?

25 MR. ERNST: Hopelessly vague, but go ahead and

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1 respond.

2 THE WITNESS: It was like meat, vegetables and
3 a little side dish usually.

4 BY MS. LOVE:

5 Q You guys didn't consume a lot of bran fiber at
6 your house?

7 A Um, no.

8 MR. ERNST: Objection; vague. If you know what
9 that is.

10 BY MS. LOVE:

11 Q Let me rephrase.

12 Do you know what bran fiber is?

13 A Like the fiber, like the -- no, I don't know.

14 Q Like, for example, cereals made out of bran,
15 like bran flakes?

16 A No.

17 Q Or Raisin Bran?

18 A No.

19 Q Didn't have a lot of that in your house?

20 A No.

21 Q You didn't have bran muffins or anything like
22 that?

23 A No.

24 Q Okay. Do you know, did your dad ever miss a
25 dose of Digitek?

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1 A I don't know.

2 Q Do you know if he ever took more Digitek than
3 he meant to by accident?

4 A I don't know.

5 Q Do you know if your dad was taking any
6 nonprescription medicine like vitamins or herbal
7 supplements at any time?

8 A I don't know.

9 Q When your dad took his medicines, how were they
10 packaged?

11 A What do you mean?

12 Q Did your dad take his pills out of a pill vial
13 or something else?

14 A Um, when we were at home, they were in the
15 individual pill jars. And when we went on vacation, he
16 put them in one of the weekly things.

17 Q So he had a strip of seven boxes that were
18 labeled the days?

19 A Yes.

20 Q Okay. When your dad took his medicines, did he
21 look at them? Did he look at them before he took them?

22 A Yes, yes.

23 Q Did he ever show them to anyone?

24 A He showed them to me a few times.

25 Q Why?

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1 A Because he was just showing me how much he had
2 to take.

3 Q So he was saying, "When you get old you're
4 going to have to" --

5 A Yeah.

6 Q -- "take this medicine like me"?

7 A Uh-huh.

8 Q Do you remember whether your dad had any bad
9 reaction to any of his medicines?

10 A I don't know.

11 Q Do you believe that your dad got more Digitek
12 than he was supposed to have gotten the day that he
13 died?

14 MR. ERNST: Objection. No foundation for that.

15 BY MS. LOVE:

16 Q You may answer.

17 MR. ERNST: Only if you know.

18 THE WITNESS: I don't know.

19 MS. LOVE: Sorry, did you --

20 MR. ERNST: I said no foundation.

21 MS. LOVE: Did you instruct the witness what to
22 answer?

23 MR. ERNST: No.

24 You can read back what I said.

25 (Record read.)

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1 MS. LOVE: Thank you.

2 Q So you don't know whether your father's --
3 whether there was anything unusual about your father's
4 Digitek dose that he took on March 22nd, 2008?

5 MR. ERNST: Objection. Outside of what your
6 lawyer has told you.

7 BY MS. LOVE:

8 Q Outside of what your lawyer has told you?

9 A No, I can't say.

10 Q Okay. I'm about to finish up.

11 I would just direct your attention again to the
12 PFS, the Plaintiff Fact Sheet, which lists mental and
13 emotional damages. I think it's item number four.

14 MR. ERNST: Just a moment.

15 Okay. What's your question?

16 BY MS. LOVE:

17 Q How did you cope with your father's death?

18 A Um, not good. Um, started slipping in school.

19 Um, emotionally it drained me. It was really
20 hard. I couldn't be at the house. I always had to be
21 in town. I wouldn't come home.

22 I wasn't -- kind of like almost like took our
23 family apart, too. Um.

24 Q Would you say that -- you said you were
25 slipping in school. Did your grades suffer?

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1 A Yes.

2 Q And it took your family apart. Can you -- did
3 it change your relationship with your family?

4 A Yes.

5 Q With whom?

6 A Um, my grandparents, my aunts and uncles.

7 Q Can you explain how those relationships changed
8 with your grandparents?

9 A Um.

10 MS. LOVE: Do you want to take a break? We can
11 take a break.

12 MR. ERNST: Take a break.

13 (Recess.)

14 MS. LOVE: Back on the record.

15 Q So before we conclude with the question
16 pending, I'm very sorry that I have to ask you these
17 questions. I'm just doing my job. We need to have some
18 information about your emotional and mental damages, but
19 I'm going to make it quick.

20 So I believe my question was, do you recall how
21 the relationships with your grandparents changed?

22 A It's just harder for the family to get together
23 and see each other it seems like.

24 Q And is that, would you say it's the same issue
25 with your aunts and uncles?

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1 A Yes.

2 Q But you indicated that after your father passed
3 away you had a lot of family with you?

4 A Yes. My mom's family from up north and Nevada,
5 they came. Um, and it was just a lot of like my dad's
6 friends and stuff stopped by.

7 Q Okay. Did you have any difficulty sleeping?

8 A Yes.

9 Q Did that start right after your father passed
10 away?

11 A Yes.

12 Q Do you still have difficulty sleeping?

13 A Yes, I do.

14 Q Would you say that that difficulty has been
15 continuous throughout that time?

16 A (Witness nods head up and down.)

17 Q Are you on any medications to help you with
18 that?

19 A No.

20 Q Have you seen a doctor to help you with that
21 condition?

22 A I haven't.

23 Q Have you seen a grief counselor?

24 A Yes.

25 Q Okay. When did you start seeing a grief

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1 counselor?

2 A Um, I can't recall for sure. Um, it was pretty
3 close after the time of his death.

4 Q Okay.

5 A Month or so.

6 Q Are you still seeing that grief counselor?

7 A No.

8 Q When did you stop?

9 A Um, two months after we started seeing him, I
10 stopped.

11 Q How frequently in that two-month period would
12 you say that you saw that counselor?

13 A Um, once a week.

14 Q So, approximately, once a week for two months?

15 A Something like that, yeah.

16 Q Okay. Have you seen any other therapists or
17 any other doctor for any emotional conditions since
18 then?

19 A No.

20 Q Were you diagnosed with any emotional
21 conditions needing therapy or medication?

22 A No.

23 Q Earlier you said it was really tough for the
24 first couple of years and now it's starting to be
25 better. You're doing better?

Daniel McCornack, Jr.

May 17, 2011

1 A Yes.

2 Q So you're able to be more at home at home?

3 A Yeah.

4 Q Are you sleeping better a little bit?

5 A Maybe a little.

6 Q Okay. And how are you doing at your job?

7 A Um, job's going well right now.

8 Q Seeing friends?

9 A Yes.

10 Q How's your relationship with your brother?

11 A Um, it's pretty good.

12 Q And your mom?

13 A It's good.

14 Q Good. Okay. Just finishing up.

15 Do you have any plans for the future?

16 A Um, not really. Um, probably going to stay
17 working and go back to school for a little bit. And I
18 don't really have too many like big plans or anything
19 yet.

20 Q Okay. So you think if you go back to school,
21 you'll start at Cuesta?

22 A Yes.

23 MS. LOVE: Okay. I think that's it. Thank you
24 very much.

25 THE WITNESS: Thank you.

Daniel McCornack, Jr.

May 17, 2011

1 EXAMINATION

2

3 BY MS. LIM:

4 Q Daniel, my name is Tiffany Lim. I introduced
5 myself to you earlier. I have a couple of really quick
6 questions to you.

7 I just want to take you back to the day that
8 you all left for your camping trip on March 22nd, 2008.

9 Can you remember whether your dad ever told you
10 or told anyone that he felt any physical discomfort that
11 day?

12 A Not that I recall.

13 Q So you don't remember if he felt -- if he
14 talked about feeling tired at all during the day?

15 A Huh-uh, no.

16 Q Whether he was dizzy?

17 A No.

18 Q No.

19 Do you remember if he ever talked about feeling
20 maybe bloated or swollen?

21 A I can't recall.

22 Q You can't recall?

23 A No.

24 MS. LIM: All right. That's all of the
25 questions I have for today.

Daniel McCornack, Jr.

May 17, 2011

1 MR. ERNST: I want to propose a stip. You're
2 from northern California. You usually don't.

3 MS. LOVE: You're going to propose a
4 stipulation for what?

5 MR. ERNST: What I would do is propose that the
6 court reporter can type up the transcript. Send it to
7 Mr. McCornack at his residence address. He can sign it
8 under penalty of perjury. If he makes any changes or
9 corrections, I'll notify you within 30 days of his
10 receipt. If for any reason the original is lost or
11 unsigned, a copy can be used at the time of the trial.
12 I'll produce the original at the time of trial.

13 MS. LOVE: I'll stipulate.

14 MS. LIM: So stipulated.

15 (Deposition concluded at 12:26 p.m.)
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Daniel McCornack, Jr.

May 17, 2011

REPORTER'S CERTIFICATE

I, Cindy D. Griffith, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That, prior to being examined, the witness named in the foregoing proceeding was by me sworn to tell the truth, the whole truth and nothing but the truth.

That said deposition was taken before me at the time and place therein set forth and was taken down by me in shorthand and thereafter reduced to computerized transcription. I hereby certify that the foregoing deposition is a full, true and correct transcript of my shorthand notes so taken.

Dated at San Luis Obispo, California, this 23rd day of May, 2011.

CINDY D. GRIFFITH
CERTIFIED SHORTHAND REPORTER